UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ORDER AMENDING LOCAL APPELLATE RULES

PRESENT: SCIRICA, **Chief Judge**, and SLOVITER, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, **Circuit Judges**

IT IS HEREBY ORDERED that amendments which change deadlines in Local Appellate Rules 9.1, 11.1, 39.4, 46.2, 112.2, 112,.5, 113.1, 113.3 and technical amendments to Local Appellate Rules 3.3, 4.1, 22.5, 27.7, 30.5, 31.4, 33.2, 33.5, 34.1, 106, 107, 108, 111.2, 112.3, 112.4, 112.8, 112.11, 113.8, 113.9 are adopted by the United States Court of Appeals for the Third Circuit as supplementary to the Federal Rules of Appellate Procedure (F.R.A.P.). These rules are effective March 8, 2010 and supercede all prior editions and all prior orders amending the Local Appellate Rules.

/s/ Anthony J. Scirica
Chief Judge

DATED: March 3, 2010

A true copy:
/s/ Marcia M. Waldron
Clerk

3.3 Payment of Fees

(a) If a proceeding is docketed without prepayment of the applicable docketing fee, the appellant must pay the fee within ~~fourteen (~~14~~)~~ days after docketing. If the appellant fails to do so, the clerk is authorized to dismiss the appeal.

(b) If an action has been dismissed by the district court pursuant to 28 U.S.C. § 1915 as frivolous or malicious, or if the district court certifies pursuant to § 1915(a) and FRAP 24(a) that an appeal is not taken in good faith, the appellant may either pay the applicable docketing fee or file a motion to proceed in forma pauperis within 14 days after docketing the appeal. If appellant fails to either pay the applicable docketing fee or file the motion to proceed in forma pauperis and any required supporting documents, the clerk is authorized to dismiss the appeal 30 days after docketing of the appeal.

Source: 1988 Court Rule 28.1

Cross-References: 28 U.S.C. §1915; FRAP 3(a), 24(a); 3d Cir. L.A.R. 24.1, 39.2, Misc. 107.2(a)

Committee Comments: Subsection (b) was added in 1995 to codify existing practice. Subsection (b) is not intended to preclude a litigant who did not seek leave to proceed in forma pauperis in the district court from requesting leave to proceed in forma pauperis in the court of appeals.

L.A.R. 4.0 APPEAL AS OF RIGHT - WHEN TAKEN

4.1 Motions to Expedite

A party who seeks to expedite a case must file a motion within ~~fourteen~~ 14 days after the opening of the case setting forth the exceptional reason that warrants expedition. If a reason for expedition arises thereafter, the moving party must file a motion within ~~fourteen (~~14~~)~~ days of the occurrence that is the basis of the motion. Motions seeking to expedite a case must include a proposed briefing schedule that has been agreed upon by the parties, if possible, but if they cannot agree, they should submit their own proposal with reasons in the motion or response. The non-moving party may agree to a proposed briefing schedule without conceding that expedition is necessary. A response to the motion, if any, must be filed within ~~seven (~~7~~) calendar~~ days after service of the motion and any reply within ~~three (~~3~~) calendar~~ days after service of the response unless otherwise directed by the court or clerk. The court or clerk may direct that service be made in the manner provided by L.A.R. 27.7.

Source: None

Cross-references: FRAP 4

Committee Comments: This rule was added in 1995 to emphasize that a request for an expedited appeal must be made promptly. ~~Calendar days were specified by the 2008 amendments.~~ See L.A.R. 27.7 requiring notification to the clerk of expedited or urgent matters. The rule was amended in 2008 to clarify that the rule applies to all types of cases.

L.A.R. 9.0 RELEASE IN CRIMINAL CASES

9.1 Appeals of Orders Relating to Release or Detention; Release Before Judgment of Conviction

(a) An appeal from an order granting or denying release from custody with or without bail or for detention of a defendant prior to judgment of conviction must be by motion filed either concurrently with or promptly after filing a notice of appeal. The movant must set forth in the body of the motion the applicable facts and law and attach a copy of the reasons given by the district court for its order. The opposing party may file a response within ~~three (3) calendar~~5 days after service of the motion, unless the court directs that the time be shortened or extended.

(b) Requests for release from custody or for detention of a defendant after judgment of conviction must be by motion filed expeditiously. The time periods and form requirements set forth in 3d Cir. L.A.R. 9.1(a) are applicable to such motions.

Source: 1988 Court Rules 11.3, 11.4

Cross-references: FRAP 9, 27; 3d Cir. L.A.R. 27.0

Committee Comments: Renumbered by the 1995 rules revision; no substantive change is intended from prior Court Rule 11.3. ~~Calendar days were specified in the 2008 amendments.~~ Response time changed to 5 days in 2010.

L.A.R. 11.0 TRANSMISSION OF THE RECORD

11.1 Duty of Appellant

Within ~~ten (10)~~14 days after filing a notice of appeal, the appellant must deposit with the court reporter the estimated cost of the transcript of all or the necessary part of the notes of testimony taken at trial. Where an appellant cannot afford the cost of transcripts, counsel for appellant, or the appellant pro se, must make application to the district court within 1~~0~~4 days of the notice of appeal for the provision of such transcript pursuant to 28 U.S.C. §753(f). If the district court denies the application, appellant must, within 1~~0~~4 days of the order denying the

application, either deposit with the court reporter the fees for such transcript or apply to the court of appeals for the transcript at government expense. Failure to comply with this rule constitutes grounds for dismissal of the appeal.

Source: 1988 Court Rule 15.1

Cross-references: 28 U.S.C. § 753(f); FRAP 10(b), 11(a); 3d Cir. L.A.R. 10.1(b), Misc. 107.1(b)

Committee Comments: No substantive change from prior Court Rule 15.1 is intended. The rule codifies current practice. Time changed to 14 days in 2010 to conform to amendments in F.R.A.P..

22.5 Application for Authorization to File a Second or Successive Petition Under 28 U.S.C. § 2254 or § 2255

(a) Forms for filing an application to file a second or successive petition under 28 U.S.C. § 2254 or § 2255 are available from the clerk. If the form application is not used, the application must contain the information requested in the form. The application must be accompanied by:

(1) the proposed new § 2254 or § 2255 petition;

(2) copies of all prior § 2254 or § 2255 petitions;

(3) copies of the docket entries in all prior § 2254 or § 2255 proceedings;

(4) copies of all magistrate judge's reports, district court opinions and orders disposing of the prior petitions; and

(5) any other relevant documents.

(b) The application may be accompanied by a memorandum, not exceeding 20 pages, clearly stating how the standards of § 2244(b) and/or § 2255 are satisfied.

(c) The movant must serve a copy of the application for authorization to file a second or successive petition and all accompanying attachments on the appropriate respondent.

(d) Any response to the application must be filed within 7 ~~calendar~~ days of the filing of the application with the clerk.

(e) If the court determines that the motion and accompanying materials are not sufficiently complete to assess the motion, the court may deny the motion with or without

prejudice to refiling or may in its discretion treat the motion as lodged, the filing being deemed complete when the deficiency is remedied.

(f) The clerk will transmit a copy of any order granting authorization to file a second or successive petition to the appropriate district court together with a copy of the petition.

(g) No filing fee is required for an application to file a second or successive petition. If the application is granted, the filing of the petition in the district court will be subject to the requirements of 28 U.S.C. § 1915(a).

(h) If the district court enters an order transferring to the court of appeals an application to file a second or successive petition or a § 2254 or § 2255 petition that the district court deems to be a second or successive petition requiring authorization, the clerk of the district court must promptly certify the record to the court of appeals as provided in L.A.R. 11.2. The record must include the documents listed in part (a)(1) through (5) of this rule. The clerk of the district court must transmit copies of its order of transfer and any necessary documents to the appropriate respondent.

(i) If a case transferred by the district court does not contain a statement by the applicant as to how the standards of § 2244(b) or § 2255 are satisfied, the clerk may direct the applicant to file a memorandum clearly stating how the statutory standards are met. Failure to file a memorandum as directed will result in the dismissal of the case by the clerk without further notice. If the applicant files a memorandum as directed, the time prescribed in § 2244(b)(3)(D) for deciding the application will run from the date the memorandum is filed.

(j) If an appeal is taken in a case in which the district court issued an order denying a petition under § 2254 or § 2255 on the grounds that it is a second or successive petition that requires authorization under § 2244, the record on appeal certified to this court must include the documents listed in part (a)(1) through (5) of this rule.

Source:	FRAP 22
Cross-references:	28 U.S.C. §§ 2244, 2253, 2254, 2255; FRAP 22
Committee Comments:	Technical changes were made in 1997 to conform to the Antiterrorism and Effective Death Penalty Act. Revisions were made in 2008 to ~~specify calendar days and to~~ accommodate electronic records.

27.7 Motions in Which Expedited Consideration is Requested

If the court or clerk determines that a motion requires expedited consideration, the court or the clerk will direct that a response in opposition, if any, must be filed within ~~seven (~~7~~) calendar~~ days after service of the motion and any reply within ~~three (~~3~~) calendar~~ days after service of the response unless a shorter time is directed by the court or clerk. Service of documents filed under this rule, including the initial motion must be in accordance with L.A.R.

27.2 and 113.4 unless the court or clerk directs that a more expeditious method of service be used. To the fullest extent possible, the clerk must be given advance notice by telephone that a motion requiring expedited or urgent consideration may be filed.

Source: New Provision added in 2002.

Cross-references: L.A.R. 8.0

Committee Comments: Section 27.7 was added in 2002 to clarify procedures for expedited motions. ~~Calendar days was specified in 2008.~~

30.5 Sanctions Pursuant to FRAP 30(b)(2)

(a) The court, *sua sponte* by Rule to Show Cause or on the motion of any party, may impose sanctions in the form of denial of all or some of the costs of the appeal upon finding that any party has unreasonably and vexatiously caused the inclusion of materials in an appendix that are unnecessary for the determination of the issues presented on appeal.

(b) A party filing such a motion must do so not later than ~~ten (~~10~~)~~ days after a bill of costs has been served. The movant must submit with the motion an itemized statement specifically setting forth, by name and appendix page number, the item or items that the movant asserts were unnecessarily included in the appendix.

(c) Any party against whom sanctions are requested may file an answer to the motion or Rule to Show Cause, which must be filed within ~~ten (~~10~~)~~ days after service of the motion or Rule to Show Cause.

Source: 1988 Court Rule 20.4

Cross-references: FRAP 30(b), 39; 3d Cir. L.A.R. Misc. 107.4

Committee Comments: Renumbered by the 1995 revision of the rules; no substantive change from prior Court Rule 20.4 is intended.

31.4 Motions for Extension of Time to File a Brief

A party's first request for an extension of time to file a brief must set forth good cause. Generalities, such as that the purpose of the motion is not for delay or that counsel is too busy, are not sufficient. A first request for an extension of ~~fourteen (~~14~~)~~ ~~calendar~~ days or less may be made by telephone or in writing. Counsel should endeavor to notify opposing counsel in advance that such a request is being made. The grant or denial by the clerk of the extension must be entered on the court docket. If a request for extension of time is made and granted orally, counsel must file a confirming letter to the clerk and to opposing counsel within ~~seven (~~7~~)~~ ~~calendar~~ days. A first request for an extension of time should be made at least ~~three (~~3~~) calendar~~ days in advance of the due date for filing the brief. A motion filed less than ~~three (~~3~~) calendar~~ days in advance of the due date must be in writing and must demonstrate that the good cause on

which the motion is based did not exist earlier or could not with due diligence have been known or communicated to the court earlier. Subsequent requests for an extension of time must be made in writing and will be granted only upon a showing of good cause that was not foreseeable at the time the first request was made. Only one motion for extension of time to file a reply brief may be granted.

Source: None

Cross-references: None

Committee Comments: The rule was adopted in 2002 to permit the oral granting of a short extension of time.

33.2 Eligibility for Appellate Mediation Program

All civil appeals and petitions for review or for enforcement of agency action are eligible for referral to the Appellate Mediation Program except: (1) original proceedings (such as petitions for writ of mandamus); (2) appeals or petitions in social security, immigration or deportation, or black lung cases; (3) prisoner petitions; (4) habeas corpus petitions or motions filed pursuant to 28 U.S.C. Sec. 2255; (5) petitions for leave to file second or successive habeas petitions; and (6) pro se cases. In all cases eligible for appellate mediation, the appellant or petitioner must file with the clerk, within ~~ten (~~10~~)~~ days of the docketing of the appeal with service on all parties, an original and two (2) copies of a Civil Appeals Information Statement and a Concise Summary of the Case, on forms to be supplied by the clerk. Appellant must attach to the Concise Summary of the Case copies of the order(s) being appealed and any accompanying opinion or memorandum of the district court or agency. In the event the order(s) being appealed or any accompanying opinion or memorandum adopt, affirm, or otherwise refer to the report and recommendation of a magistrate judge or the decision of a bankruptcy judge, the report and recommendation or decision must also be attached. In addition, any judge or panel of the court may refer to the special master any appeal, petition, motion or other procedural matter for review and possible amicable resolution.

33.5 Proceedings After Selection for the Program

(a) Submission of Position Papers and Documents. Within ~~fifteen (~~15~~)~~ days of the case's selection for mediation by the special master, each counsel must prepare and submit to the mediator a confidential position paper of no more than ~~ten (~~10~~)~~ pages, stating counsel's views on the key facts and legal issues in the case, as well as on key factors relating to settlement. The position paper will include a statement of motions filed in the court of appeals and their status. Copies of position papers submitted by the parties directly to the mediator should not be served upon opposing counsel. Documents prepared for mediation sessions are not to be filed with the Clerk's Office and are not to be of record in the case.

(b) Mediation Sessions. The mediator will notify the parties of the time, date, and place of the mediation session and whether it will be conducted in person or telephonically. Unless the mediator directs otherwise, mediation sessions must be attended by the senior lawyer

for each party responsible for the appeal and by the person or persons with actual authority to negotiate a settlement of the case. If settlement is not reached at the initial mediation session, but the mediator believes further mediation sessions or discussions would be productive, the mediator may conduct additional mediation sessions in person or telephonically.

(c) Confidentiality of Mediation Proceedings. The mediator will not disclose to anyone statements made or information developed during the mediation process. The attorneys and other persons attending the mediation are likewise prohibited from disclosing statements made or information developed during the mediation process to anyone other than clients, principals or co-counsel, and then, only upon receiving due assurances that the recipients will honor the confidentiality of the information. Similarly, the parties are prohibited from using any information obtained as a result of the mediation process as a basis for any motion or argument to any court. The mediation proceedings are considered compromise negotiations under Rule 408 of the Federal Rules of Evidence. Notwithstanding the foregoing, the bare fact that a settlement has been reached as a result of mediation will not be considered confidential.

(d) Settlement. No party will be bound by statements or actions at a mediation session unless a settlement is reached. If a settlement is reached, the agreement must be reduced to writing and will be binding upon all parties to the agreement, and counsel must file a stipulation of dismissal of the appeal pursuant to Rule 42(b), FRAP Such a stipulation must be filed within ~~thirty (~~30~~)~~ days after settlement is reached unless an extension thereof is granted by the special master.

34.1 In General

(a) The court will allow oral argument in all cases unless the panel, after examination of the briefs and records or appendices, is unanimously of the opinion that oral argument is not needed.

(b) Any party to the appeal has the right to file a statement with the court setting forth the reasons why, in the party's opinion, oral argument should be heard. Such statement must be filed with the clerk within ~~seven (~~7~~) calendar~~ days after the filing of appellee's or respondent's brief. The request must set forth the amount of argument time sought.

(c) In certain appeals, the clerk will inform the parties by letter of a particular issue(s) that the panel wishes the parties to address.

(d) The court will grant a motion requesting rescheduling of the argument only where the moving party shows extraordinary circumstances.

(e) A party may request oral argument by video-conference. Such a request may be made by calling the clerk’s office. Counsel must notify all opposing sides that a request for video-conference has been made. Generally, a request for oral argument by video-conference should be made when the party is notified of the calendaring of the case. In any case, a request for oral argument by video must be made as soon as possible after counsel knows that a video-conference is needed. Granting of the request is at the Court’s discretion.

Source: 1988 Court Rule 12.6

Cross-references: FRAP 21(b), 34; 3d Cir. L.A.R. 27.1; Third Circuit Internal Operating Procedures, Chapter 2 (1994)

Committee Comments: Because the panels are constituted in advance for a specific sitting, rescheduling of an argument may result in a second panel being assigned an appeal when one panel has already performed the necessary study of the briefs and appendix. Alternatively, it may result in members of the panel having to travel to Philadelphia at additional government expense, disrupting previously established schedules. Such needless waste of judicial resources underlies this court's precedent of declining to reschedule except upon a showing of extraordinary circumstances. Subsection (c), adopted in 1995, contains a provision that counsel in certain cases will be notified prior to the oral argument of a particular issue, if any, that is of concern to the court. The portions of prior Court Rule 12.6 that were repetitive of FRAP were deleted in 1995. Otherwise no substantive change from prior Court Rule 12.6 is intended. The rule was revised and simplified in 2000 and 2008.

39.4 Filing Date; Support for Bill of Costs

(a) The court will deny untimely bills of cost unless a motion showing good cause is filed with the bill.

(b) Parties must submit the itemized and verified bill of costs on a standard form to be provided by the clerk.

(c) An answer to objections to a bill of costs may be filed ~~within 10~~within14 days of service of the objections.

Source: 1988 Court Rules 20.2, 20.3

Cross-references: FRAP 39

Committee Comments: The portions of prior Court Rules 20.2 and 20.3 that were repetitive of FRAP 39 were deleted in 1995. The rule now specifically allows for an answer to objections, a codification of existing practice. Otherwise, no substantive change from prior Court Rules 20.2 and 20.3 is intended. Time changed to 14 days in 2010 to conform to amendments in FRAP.

46.2 Entry of Appearance

Within ~~ten (10)~~ 14 days of notification of the docketing of a case, counsel for the appellant or petitioner must file an entry of appearance which must include an address where notices and papers may be mailed to or served upon him or her. Counsel must include an e-mail address. The entry of appearance form must be served on all parties. Not later than ~~ten~~14 days after the docketing of the appeal, counsel for all parties in the trial court or agency below and any other persons entitled to participate in the proceedings as appellees or respondents and desiring to do so, must file similar appearances. Any such party or other person on whose behalf counsel fails to file an entry of appearance within the time fixed by this rule will not be entitled to receive notices or copies of briefs and appendices until an entry of appearance has been entered for such party. Counsel or a party proceeding pro se who is not registered as a Filing User must be served directly with copies of notices, motions, and briefs.

Source: 1988 Court Rule 9.2

Cross-references: FRAP 46

Committee Comments: This rule was renumbered by the 1995 revision of the rules; no substantive change from prior Court Rule 9.2 is intended. The requirement of an e-mail address was added in 2008. Time changed to 14 days in 2010 to conform to amendments in FRAP.

L.A.R. MISC. 106.0 FILING OF DOCUMENTS UNDER SEAL

106.1 Necessity; Grand Jury Matters; Previously Impounded Records; Unsealing

(a) Generally. With the exception of matters relating to grand jury investigations, filing of documents under seal without prior court approval is discouraged. If a party believes a portion of a brief or other document merits treatment under seal, the party must file a motion setting forth with particularity the reasons why sealing is deemed necessary. Any other party may file objections, if any, within ~~seven (7) calendar~~7 days.

A motion to seal must explain the basis for sealing and specify the desired duration of the sealing order. If discussion of confidential material is necessary to support the motion to seal, the motion may be filed provisionally under seal. Rather than automatically requesting the sealing of an entire brief, motion, or other filing, litigants should consider whether argument relating to sealed materials may be contained in a separate sealed supplemental brief, motion or filings. Sealed documents must not be included in a regular appendix, but may be submitted in a separate, sealed volume of the appendix. In addressing material under seal (except for the presentencing report) in an unsealed brief or motion or oral argument counsel are expected not to disclose the nature of the sealed material and to apprise the court that the material is sealed.

(b) Grand Jury Matters. In matters relating to grand jury investigations, when there is inadequate time for a party to file a motion requesting permission to file documents under seal, the party may file briefs and other documents using initials or a John or Jane Doe designation to avoid disclosure of the identity of the applicant or the subject matter of the grand jury investigation. Promptly thereafter, the party must file a motion requesting permission to use such a designation. All responsive briefs and other documents must follow the same format until further order of the court.

(c) Records Impounded in the District Court.

(1) Criminal Cases and Cases Collaterally Attacking Convictions. **G**rand jury materials protected by Fed. R. Crim. P. 6(c), presentence report**s**, statement**s** of reasons for the sentence and any other similar material in a criminal case or a case collaterally attacking a conviction (cases under 28 U.S.C. §§ 2241, 2254, 2255), which were filed with the district court under seal pursuant to statute, rule or an order of impoundment, and which constitute part of the record transmitted to this court, remain subject to the district court's impoundment order and will be placed under seal by the clerk of this court until further order of this court. In cases in which impounded documents other than grand jury materials, presentence reports, statements of reasons for the sentence, or other documents required to be sealed by statute or rule, are included in the record transmitted to this court under L.A.R. 11.2, the party seeking to have the document sealed must file a motion within 21 days of receiving notice of the docketing of the appeal in this court, explaining the basis for sealing and specifying the desired duration of the sealing order. If discussion of confidential material is necessary to support the motion to seal, the motion may be filed provisionally under seal.

(2) Civil Cases. When the district court impounds part or all of the documents in a civil case, they will remain under seal in this court for ~~thirty (~~30~~)~~ days after the filing of the notice of appeal to give counsel an opportunity to file a motion to continue the impoundment, setting forth the reasons therefor. A motion to continue impoundment must explain the basis for sealing and specify the desired duration of the sealing order. If the motion does not specify a date, the documents will be unsealed, without notice to the parties, five years after conclusion of the case. If discussion of confidential material is necessary to support the motion to seal, the motion may be filed provisionally under seal. If a motion to continue impoundment is filed, the documents will remain sealed until further order of this court.

Source: 1988 Court Rule 21.3

Cross-references: 3d Cir. L.A.R. 30.3

Committee Comments: Prior Court Rule 21.3 has no counterpart in FRAP and is therefore classified as Miscellaneous. The rule has been revised to place an affirmative obligation to file a motion on the party in a civil matter who wishes to continue the sealing of documents on appeal. The archiving center will not accept sealed documents, which presents storage problems for the court. The rule has been amended to require the parties to specify how long documents must be kept

under seal after the case is closed. The rule was amended in 2008 to ~~specify calendar days and to~~ provide that unless otherwise specified, documents in civil cases would remain sealed only for five years.

L.A.R. MISC. 107.0 SANCTIONS

107.1 Dismissal of Appeal for Failure to Pay Certain Fees

(a) The clerk is authorized to dismiss the appeal if the appellant does not pay the docketing fee within ~~fourteen (~~14~~)~~ days after the case is opened in the court of appeals , as prescribed by 3d Cir. L.A.R. 3.3.

(b) The appellant's failure to comply with 3d Cir. L.A.R. 11.1 regarding transcription fees is grounds for dismissal of the appeal.

Source: 1988 Court Rules 15.1, 28.1

Cross-references: FRAP 3(a), 11; 3d Cir. L.A.R. 3.3

Committee Comments: For the convenience of counsel, all rules relating to sanctions are included in 3d Cir. L.A.R. Misc. 107.0. Where these rules have some counterpart in FRAP, they are included in both the corresponding 3d Cir. L.A.R. and Misc. 107.0. Where they have no counterpart in FRAP, they are included in 3d Cir. L.A.R. Misc. 107.0 only. Only the parts of prior Court Rules 15.1 and 28.1 setting forth sanctions have been included here. No substantive change from prior Court Rules 15.1 and 28.1 is intended. The rule was amended in 2008 to clarify when the time for payment of fees begins to run.

107.2 Dismissal for Failure to Prosecute

(a) When an appellant fails to comply with the Federal Rules of Appellate Procedure or the Local Appellate Rules of this court, the clerk will issue written notice to counsel or to the appellant who appears pro se that upon the expiration of ~~fourteen (~~14~~)~~ days from the date of the notice, the appeal may be dismissed for want of prosecution unless appellant remedies the deficiency within that time. If the deficiency is not remedied within this period, the clerk is authorized to dismiss the appeal for want of prosecution and issue a certified copy thereof to the clerk of the district court as the mandate. The appellant is not entitled to remedy the deficiency after the appeal is dismissed except by order of the court. A motion to set aside such an order must be justified by the showing of good cause and must be filed within ~~ten (~~10~~)~~ days of the date of dismissal. If the appeal is one taken from the District Court of the Virgin Islands, an additional ~~ten (~~10~~)~~ days will be added to the time limits specified in this paragraph.

(b) Notwithstanding subsection (a), if an appellant fails to comply with the Federal Rules of Appellate Procedure and the Local Appellate Rules with respect to the timely filing of a brief and appendix, at any time after the seventh day following the due date, the clerk is authorized to dismiss the appeal for want of timely prosecution. The procedure to be followed in requesting an order to set aside dismissal of the appeal is the same as that set forth in subsection (a).

Source: 1988 Court Rule 28.2

Cross-references: FRAP 3(a)

Committee Comments: Prior Court Rule 28.2 had no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 28.2 is intended.

107.3 Non-Conforming Motion, Brief or Appendix

If a motion, brief, or appendix submitted for filing does not comply with FRAP 27 - 32 or 3d Cir. L.A.R. 27.0 - 32.0, the clerk will file the document, but notify the party of the need to promptly correct the deficiency. The clerk will also cite this rule and indicate to the defaulting party how he or she failed to comply. In the event a party subsequently corrects the deficiencies in either a brief or appendix pursuant to this rule and that party prevails on appeal, costs which were incurred in order to bring the brief or appendix into compliance may not be allowed. If the party fails or declines to correct the deficiency, the clerk must refer the defaulting document, any motion or answer by the party, and pertinent correspondence to a judge of this court for review. If the court finds that the party continues not to be in compliance with the rules despite the notice by the clerk, the court may, in its discretion, impose sanctions as it may deem appropriate, including but not limited to the dismissal of the appeal, striking of the document, imposition of costs or disciplinary sanctions upon counsel.

Source: 1988 Court Rule 21.4

Cross-references: FRAP 3(a), 30(b)(2), 38; 3d Cir. L.A.R. 27.0 - 32.0

Committee Comments: Prior Court Rule 21.4 had no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 21.4 is intended.

107.4 Sanctions Pursuant to FRAP 30(b)(2)

(a) The court, *sua sponte* by Rule to Show Cause or on the motion of any party, may impose sanctions in the form of denial of all or some of the costs of the appeal upon finding that any party has unreasonably and vexatiously caused the inclusion of materials in an appendix that are unnecessary for the determination of the issues presented on appeal.

(b) A party filing such a motion must do so not later than ~~ten (~~10~~)~~ days after a bill of costs has been served. The movant must submit with the motion an itemized statement specifically setting forth, by name and appendix page number, the item or items that the movant asserts were unnecessarily included in the appendix.

(c) Any party against whom sanctions are requested may file an answer to the motion or Rule to Show Cause, which must be filed within ~~ten (~~10~~)~~ days after service of the motion or Rule to Show Cause.

Source: 1988 Court Rule 20.4

Cross-references: FRAP 30(b)(2); 3d Cir. L.A.R. 30.5

Committee Comments: This Miscellaneous Rule is identical to 3d Cir. L.A.R. 30.5. No substantive change from prior Court Rule 20.4 is intended.

L.A.R. MISC. 108.0 APPLICATIONS FOR ATTORNEY'S FEES AND EXPENSES

108.1 Application for Fees

(a) Except as otherwise provided by statute, all applications for an award of attorney's fees and other expenses relating to a case filed in this court, regardless of the source of authority for assessment, must be filed within ~~thirty (~~30~~)~~ days after the entry of this court's judgment, unless a timely petition for panel rehearing or rehearing en banc has been filed, in which case a request for attorney's fees must be filed within ~~fourteen (~~14~~)~~ days after the court's disposition of such petition. Such application must be filed with the clerk in the time set forth above whether or not the parties seek further action in the case or further review from any court.

(b) The court will strictly adhere to the time set forth above and grant exceptions only in extraordinary circumstances.

(c) The application must include a short statement of the authority pursuant to which the party seeks the award. The application must also show the nature and extent of services rendered and the amount sought, including an itemized statement in affidavit form from the attorney stating the actual time expended and the rate at which fees are computed, together with a statement of expenses for which reimbursement is sought.

Source: 1988 Court Rule 27.1

Cross-references: None

Committee Comments: Prior Court Rule 27.1 has no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 27.1 is intended. L.A.R. Misc. 108.3 addresses claims for attorney's fees and expenses under the Criminal Justice Act, 18

U.S.C. § 3006A. Petition for rehearing en banc was substituted for "suggestion for rehearing en banc" in 2008 to conform to changes in FRAP.

108.2 Objections to Applications for Fees

Written objections to an allowance of attorney's fees, setting forth specifically the basis for objection, must be filed within ~~ten (~~10~~)~~ days after service of the application. Thereafter, the court may, when appropriate, either refer the application to the district court or agency where the case originated or refer the application to a master.

Source: 1988 Court Rule 27.2

Cross-references: FRAP 48; 3d Cir. L.A.R. 48.0

Committee Comments: Prior Court Rule 27.2 has no counterpart in FRAP and is therefore classified as Miscellaneous. No substantive change from prior Court Rule 27.2 is intended.

111.2 Preliminary Requirements

(a) In aid of this court's potential jurisdiction, each party in any proceeding filed in any district court in this circuit challenging the imposition of a sentence of death pursuant to a federal or state court judgment must file a "Certificate of Death Penalty Case" with any initial pleading filed in the district court. A certificate must also be filed by the U.S. Attorney upon return of a verdict of death in a federal criminal case. The certificate will include the following information: names, addresses, and telephone numbers of parties and counsel; if set, the proposed date of execution of sentence; and the emergency nature of the proceedings. Upon docketing, the clerk of the district court will transmit a copy of the certificate, together with a copy of the petition, to the clerk of this court.

(b) Upon entry of an appealable order in the district court, the clerk of the district court and appellant's counsel will prepare the record for appeal. The record will be transmitted to this court within ~~five (5) calendar~~5 days after the filing of a notice of appeal from the entry of an appealable order under 18 U.S.C. § 3731, 28 U.S.C. § 1291, or 28 U.S.C. § 1292(a)(1), unless the appealable order is entered within ~~fourteen (~~14~~)~~ days of the date of a scheduled execution, in which case the record must be transmitted immediately by expedited delivery.

(c) Upon the entry of a warrant or order setting an execution date in any case within the geographical boundaries of this circuit, and in aid of this court's potential jurisdiction, the clerk is directed to monitor the status of the execution and any pending litigation and to establish communications with all parties and relevant state and/or federal courts. Without further order of this court, the clerk may direct parties to lodge with this court up to five copies of (1) relevant portions of previous state and/or federal court records, or the entire record, and (2) pleadings, briefs, and transcripts of any ongoing proceedings.

Source: 1988 Court Rule 29.1

Cross-references: 18 U.S.C. § 3731, 28 U.S.C. §§ 1291, 1292

Committee Comments: Prior Court Rule 29.1 has no counterpart in FRAP and is therefore classified as Miscellaneous. The prior rule's general reference to a "certificate providing specific information" has been changed to the more specific "Certificate of Death Penalty Case" to reflect current practice. Subsection (c) directs the clerk to establish lines of communication with the sentencing court and other concerned parties and to authorize the filing of documents and court records in advance of the court's jurisdiction. This section has been added because some parties in recent cases have challenged the clerk's authority to request information in the absence of a docketed appeal. Because early warning is critical, the court expressly delegates this authority to the clerk pursuant to this local rule. ~~Calendar days was specified in 2008.~~

112.2 Petition for Writ of Certiorari - How Sought

(a) In both civil and criminal cases, review of a final decision of the Supreme Court of the Virgin Islands may be sought pursuant to 48 U.S.C. § 1613 by filing a petition for a writ of certiorari with the Clerk of the United States Court of Appeals for the Third Circuit within ~~sixty (~~60~~)~~ days from the entry of judgment sought to be reviewed on the docket of the Supreme Court of the Virgin Islands. A petition filed by an incarcerated person will be deemed filed when placed in the prison mail system; the petition must be accompanied by a statement under penalty of perjury stating the date the petition was placed in the prison mail system and stating that first-class postage has been pre-paid. In all other cases, the petition must be received by the Clerk in Philadelphia by the sixtieth day.

(b) Petitioner must file, with proof of service, an original and three copies of the petition for writ of certiorari. Petitioner must serve one copy of the petition for writ of certiorari on each of the parties to the proceedings in the Supreme Court of the Virgin Islands. When filing the petition, petitioner must pay the docketing fee, which shall be the same as the fees charged for an original proceeding such as a petition for writ of mandamus or petition for review of an agency order, in the Court of Appeals. Counsel for the petitioner must enter an appearance within ~~ten~~ 14 days of filing a petition. Once the case has been opened on the court's electronic docketing system, all documents must be filed electronically in accordance with L.A.R. Misc. 113.

(c) Parties interested jointly may file a joint petition. A petitioner not shown on the petition at the time of filing may not later join in that petition.

(d) If a petition for rehearing of the final decision of the Supreme Court of the Virgin Islands is timely filed pursuant to the Rules of the Supreme Court of the Virgin Islands or if that court sua sponte considers rehearing, the time for filing the petition for writ of certiorari

shall run from entry of the order denying the petition or, if rehearing is granted, from entry of the order on rehearing.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing. Time changed to 14 days in 2010 to conform to amendments in FRAP.

112.3 Cross-Petitions for Certiorari

(a) Unless a rule specifies a different procedure for a cross-petition for certiorari, the rules for a petition for certiorari apply to cross-petitions.

(b) A cross-petition for a writ of certiorari may be filed within ~~twenty-one (~~21~~)~~ days after the first petition was filed. When filing the cross-petition, cross-petitioner must pay the docketing fee. The cross-petitioner must serve one copy of the petition on each of the parties to the proceedings in the Supreme Court of the Virgin Islands.

(c) a cross-petitioner need not duplicate the appendix filed by petitioner

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.4 Extension of Time to File Petitions

(a) A circuit judge, for good cause shown, may extend the time for filing a petition for writ of certiorari or cross-petition for a period not exceeding ~~thirty (~~30~~)~~ days. Any application for extension of time within which to file a petition for writ of certiorari must set out the grounds on which the jurisdiction of this court is invoked, must identify the judgment sought to be reviewed and have appended thereto a copy of the opinion, and must set forth with specificity the reasons justifying an extension. An untimely petition for writ of certiorari must be accompanied by a motion for extension of time. However, an application for extension of time to file a petition for certiorari ordinarily will not be granted, if filed less than ~~five (~~5~~)~~ days before the expiration of the time to file a petition.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.5 Denominating Parties

(a) The party filing the first petition for the writ of certiorari shall be denominated the petitioner; petitioner's denomination in the appeal or other proceeding before the Supreme Court and the Superior Court of the Virgin Islands must be included in the first paragraph of the statement of the case.

(b) Parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties in this court and shall be denominated respondents, unless the petitioner notifies the clerk of this court in writing of petitioner's belief that one or more of the parties below has no interest in the outcome of the petition. A copy of such notice must be served on all parties to the proceeding in the Supreme Court of the Virgin Islands. A party noted as no longer interested may remain a party by notifying the clerk in writing within ~~ten (10)~~14 days from the date of service of petitioner's notice, with service on all other parties, that the party has an interest in the petition. Each respondent's denomination in the proceedings before the Supreme Court and the Superior Court of the Virgin Islands must be included in the petition for writ of certiorari in the first paragraph of the statement of the case. Any respondent who supports the position of a petitioner must meet the time schedule for filing responsive document.

(c) a party who files a cross-petition for certiorari is denominated as respondent/cross-petitioner.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.8 Brief in Opposition - in Support - Reply - Supplemental Briefs

(a) Within ~~thirty (~~30~~)~~ days of receipt of a petition for writ of certiorari, a respondent may file electronically a brief in opposition. An original and three paper copies, with certificate of service, of the opposing brief must be filed for the court's convenience. In addition to the merits of the questions presented, the brief should address whether the issues identified by the petitioner are suitable for review. The respondent may agree that the petition for certiorari should be granted because the case presents an important question, yet argue that the decision of the Supreme Court of the Virgin Islands is correct.

(b) A respondent supporting the position of the petitioner must file a response supporting the petition with 20 days of the opening of the case. Parties who file no document will not qualify for any relief from the court.

(c) If no response is received within the time prescribed, it will be assumed that the party does not wish to participate and will no longer receive notices from the clerk or be entitled to service of documents from the other parties. The clerk may direct a party to file a response.. Ordinarily, a petition for certiorari will not be granted unless a response has been filed or requested.

(d) No motion by a respondent to dismiss a petition for writ of certiorari will be received. Objections to the jurisdiction of the court to grant the writ of certiorari may be included in the brief in opposition.

(e) Petitioner may file electronically a reply brief addressed to arguments first raised in the brief in opposition within ~~fourteen (~~14~~)~~ days of receipt of respondent's brief. An original and three paper copies, with certificate of service, of the reply brief must be filed for the court's convenience.

(f) Motions for extensions of time to file a brief are governed by Third Circuit L.A.R. 31.4

(g) No supplemental filings may be made by any party except as provided in Rule 28(j), FRAP

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

112.11 Record on Review

(a) The record on review shall consist of the record presented to the Supreme Court of the Virgin Islands.

(b) Within ~~thirty (~~30~~)~~ days of an order granting a writ of certiorari, the Clerk of the Supreme Court of the Virgin Islands must file a certified copy of the docket entries in lieu of the record with the Clerk of the Court of Appeals. The filing of the certified docket entries with the Court of Appeals constitutes the filing of the record.

Source: 48 U.S.C. § 1613

Cross-references: None

Committee Comments: L.A.R. 112.1 - 112.14 were enacted in 2007. The rules were amended in 2008 to provide for electronic filing.

L.A.R.MISC. 113 ELECTRONIC FILING

113.1 Scope of Electronic Filing

(a) Except as otherwise prescribed by local rule or order, all cases will be assigned to the court's electronic filing system. Case-initiating documents in original proceedings in the court of appeals must be filed in paper format. Except as otherwise prescribed by local rule or court order, all briefs, motions, petitions for rehearing, and other documents subsequently filed in any case with the court by a Filing User registered as set forth under Rule 113.2 must be filed electronically using the electronic filing system.

(b) Ten paper copies of briefs and four paper copies of the appendices must be filed within ~~three~~5 days as provided in L.A.R. 31.1. The clerk may direct a party to provide the court with paper copies of other documents electronically filed.

(c) Upon the court's request, a Filing User must promptly provide the clerk, in a format designated by the court, an identical electronic version of any paper document previously filed in the same case by that Filing User.

(d) By local rule or order of the court or clerk, electronic access to entire case files or portions thereof may be restricted to the parties and the court. Public documents, except those filed under seal, may be viewed at the clerk's office.

(e) Upon motion and a showing of good cause, the court may exempt a Filing User from the provisions of this Rule and authorize filing by means other than use of the electronic filing system.

Source: Model Local Rules

Cross-References: FRAP 31; L.A.R. 31.1

Comments: Rules on electronic filing were added in 2008. This Local Appellate Rule is not intended to supplant the requirements of FRAP31(b) or any local rule or procedure requiring counsel to provide additional paper copies of filings to the court. Time for filing paper copies changed to 5 days in 2010.

113.3 Consequences of Electronic Filing

(a) Electronic transmission of a document to the electronic filing system consistent with these rules, together with the transmission of a Notice of Docket Activity from the court, constitutes filing of the document under the Federal Rules of Appellate Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under FRAP 36 and 45(b). If the court requires a party to file a motion for leave to file a document, both the motion and document at issue should be submitted electronically; the underlying document will be filed if the court so directs.

(b) Before filing a document with the court, a Filing User must verify its legibility and completeness. Documents created by the filer and filed electronically must be in PDF text format. When a document has been filed electronically, the official record is the electronic document stored by the court, and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically under Rule 113.1, a document filed electronically is deemed filed at the date and time stated on the Notice of Docket Activity from the court.

(c) Filing must be completed by ~~11:59 p.m.~~midnight on the last day Eastern Time to be considered timely filed that day.

Source: Model Local Rules

Cross-References: L.A.R. 27-32, 35, 40

Comments: Rules on electronic filing were added in 2008.

113.4 Service of Documents by Electronic Means

(a) The Notice of Docket Activity that is generated by the court's electronic filing system constitutes service of the filed document on all Filing Users. Parties who are not Filing Users must be served with a copy of any document filed electronically in accordance with the Federal Rules of Appellate Procedure and the local rules.

(b) If the document is not filed and served electronically through the court's cm/ecf system, the filer must use an alternative method of service prescribed by FRAP 25(c).

(c) The Notice of Docket Activity generated by the court's electronic filing system does not replace the certificate of service required by FRAP 25. The certificate of service must state either that the other party is a Filing User and is served electronically by the Notice of Docket Activity or that the other party will be served with paper documents pursuant to FRAP 25(c)

Source: Model Local Rules

Cross-references: L.A.R. 27.2 and 31.1

Comments: The electronic filing system generates a Notice of Docket Activity at the time a document is filed with the system. The Notice indicates the time of filing, the name of the party and attorney filing the document, the type of document, and the text of the docket entry. It also contains an electronic link (hyperlink) to the filed document, if one was attached to the filing, allowing anyone receiving the notice by e-mail to retrieve the document automatically. The system sends this Notice to all case participants registered as Filing Users of the electronic filing

system. Under the amendments to FRAP 25, a court may, by local rule, provide that the court's automatically generated Notice of Docket Activity constitutes service of the document on all Filing Users in the case.

Parties who are not Filing Users have not consented to electronic service via the Notice of Docket Activity. They must be served in some other way authorized by FRAP 25.

If the document is not filed electronically through the court's cm/ecf system, the filer must use an alternative method of service prescribed by FRAP 25(c).

FRAP 26 provides that the three additional days to respond to service by mail will apply to electronic service as well. This provision is intended to account for technical problems that can arise during electronic service and to encourage parties to consent to electronic service.

Time changed to midnight in 2010 to conform to amendments to FRAP.

113.8 Retention Requirements

Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until ~~two (2)~~ years after the issuance of the mandate or order closing the case, whichever is later. If counsel withdraws and a new attorney enters an appearance, documents that require original signatures must be transferred to the new attorney of record. On request of the court, the Filing User must provide original documents for review.

Source: Model Local Rules

Cross Reference: None

Comments: Because electronically filed documents do not include original, handwritten signatures, it is necessary to provide for retention of certain signed documents in paper form in case they are needed as evidence in the future. The Rule addresses the retention requirement for "verified documents" (in which a person verifies, certifies, affirms, or swears under oath or penalty of perjury, e.g. affidavits, stipulations or the Criminal Justice Act forms) bearing original signatures of persons other than the person who files the document electronically.

113.9 Signatures

(a) The user log-in and password required to submit documents to the electronic filing system serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of the Federal Rules of Appellate Procedure, the local rules of court, and any other purpose for which a signature is required in connection with proceedings before the court.

(b) The name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear. Alternatively, an electronic signature may be used.

(c) No Filing User or other person may knowingly permit or cause to permit a Filing User's log-in and password to be used by anyone other than an authorized agent of the Filing User. Documents requiring signatures of more than one party must be electronically filed either by:

(1) submitting a scanned document containing all necessary signatures;

(2) submitting a statement representing the consent of the other parties on the document;

(3) identifying on the document the parties whose signatures are required and submitting a notice of endorsement by the other parties no later than three business days after filing; or

(4) in any other manner approved by the court. Electronically represented signatures of all parties and Filing Users as described above are presumed to be valid signatures. If any party, counsel of record, or Filing User objects to the representation of his or her signature on an electronic document as described above, he or she must, within 10 ~~calendar~~ days, file a notice setting forth the basis of the objection.

Source:	Model Local Rules
Cross References:	L.A.R. 28 and 46
Comments:	An electronic signature or the "s/" preceding a typed name indicates that the electronically filed document was endorsed by that party or Filing User. This Rule does not require a Filing User to personally file his or her own documents. The task of electronic filing may be delegated to an authorized agent, who may use the log-in and password to make the filing. Use of the log-in and password to make the filing constitutes a signature by the Filing User under the Rule, even though the Filing User does not perform the physical act of filing. Issues arise when documents being electronically filed have been signed by persons other than the filer, *e.g.*, stipulations and

affidavits. For documents signed by individuals without logins and passwords (non-Filing Users), the Rule provides that the signature must appear as "s/" or as a scanned image. Under L.A.R. Misc. 113.8 above, the Filing User must retain a paper copy with the original signature of any such document filed by the Filing User.